

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* ARNOLD, Minors.

UNPUBLISHED  
January 11, 2018

No. 338490  
Delta Circuit Court  
Family Division  
LC No. 16-000216-NA

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Before: METER, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court’s order terminating her parental rights to two minor children under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist and no reasonable likelihood of rectification), MCL 712A.19b(3)(g) (failure to provide proper care or custody and no reasonable expectation of doing so), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

I. RELEVANT FACTS AND PROCEEDINGS

Respondent had previously signed a safety plan with the Department of Health and Human Services (DHHS) agreeing to remove her children from any domestic-violence situations after respondent and the children’s father had a physical altercation that resulted in the father’s arrest and the imposition of a no-contact order. The petition at issue in the present case alleged as follows: On March 28, 2016, a non-parent adult who lived in the home kicked down the door while the children were present. Responding officers found drug paraphernalia, including three marijuana bongs as well as marijuana itself, within reach of the children. They also found an unidentified pill on the children’s bedroom floor and multiple prescription bottles, not belonging to any household member, scattered throughout the home. Additionally, respondent’s home was filthy, with cat feces found throughout the home as well as the permeating smell of cat urine.

Following a preliminary hearing, the children were removed from respondent’s care based on the allegations in the petition and were placed with a relative. The court conducted an adjudication trial and took jurisdiction over the children on May 4, 2016. Thereafter, it conducted various hearings and dispositional reviews, between May 2016 and February 2017. At the first dispositional review on May 23, 2016, the foster-care worker testified that respondent admitted that she had a “slip-up” when she tested positive for amphetamine and cocaine after the children’s removal. At a show-cause hearing on August 22, 2016, it was established that respondent had again tested positive for controlled substances, including amphetamine and

Suboxone, for which she did not have a prescription. She was given a 10-day suspended sentence for being in contempt of court,<sup>1</sup> was warned that she was “running out of time” for reunification with the children, and was ordered to contact her caseworker every day during certain hours because the caseworker was having difficulty contacting her and scheduling drug tests. Respondent did not follow that order during the week after the hearing and the court ordered her to serve the suspended sentence.

In October 2016, illegal drugs, including marijuana and buprenorphine, were found in respondent’s home, and she ended up being criminally charged. On November 19, 2016, the court held another show-cause hearing, at which respondent pleaded no contest to civil contempt for her failure to adhere to the court’s order not to be in possession of controlled substances. The court imposed another suspended sentence because respondent was receiving in-patient treatment.

At a dispositional review hearing on February 6, 2017, respondent testified that she had completed residential substance-abuse treatment but was homeless and pregnant, and still had criminal charges pending against her for illegal drugs found in her home. The court gave her 90 days to improve her situation. However, a petition to terminate respondent’s parental rights was filed on March 23, 2017, averring that respondent had made little to no progress and had tested positive for methamphetamine.

At the time of the April 21, 2017, termination hearing, respondent was living in a domestic-violence women’s shelter. She was scheduled to be evicted at the end of the month. She had been without permanent and stable housing for approximately five months. Respondent testified that if the children were returned to her, they would live in the shelter with her and she would eventually find a permanent place for them to reside.

Respondent was also on probation for a felony conviction for possession of drug analogues. Additionally, she had tested positive for methamphetamine in both March 2017 and February 2017, but maintained that the February positive test was the result of Ritalin, a claim the court found not credible. Respondent also tested negative for some of her mental-health prescription medicines, and a scheduled pill count showed that she was in possession of more pills than she should have been for a prescription, indicating that she was not taking her medication as prescribed. She was short of other prescription pills, suggesting that she was taking more than prescribed, which could affect her ability to parent the children.

Respondent claimed she was attending AA/NA meetings once a week, but she was supposed to attend twice weekly. She had not completed substance-abuse counseling as directed. She missed prenatal care appointments throughout December and January, and when she did attend prenatal appointments, she often would leave before any labs could be completed. Respondent was regularly attending counseling for her mental-health issues and was participating in the case-services plan to a greater extent than she had earlier. However, her new

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<sup>1</sup> She had been ordered to refrain from using controlled substances.

foster-care worker opined that although participation had improved, it was “[a]bsolutely not” sufficient to justify stalling the termination of her parental rights.

Respondent’s caseworker noted both positive and negative aspects of respondent’s parenting time. Negatives included that respondent would tell the children about her health, housing, and other adult issues, and was not focused on the children and their needs at parenting time. Respondent also participated in an unauthorized unsupervised parenting time with her children at a local Easter egg hunt.

The caseworker said that the majority of the concerns that were present when the children came under the court’s jurisdiction still existed and that respondent’s compliance with the case-services plan was very poor. She expressed that the children had a need for a safe and stable environment and that respondent had not demonstrated an ability to provide it. The trial court concurred and terminated respondent’s parental rights.

## II. ANALYSIS

### A. STANDARD OF REVIEW

We review a trial court’s findings that a ground for termination has been established under the clearly-erroneous standard. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), abrogated in part on other grounds as stated in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). We also review for clear error a court’s determination that termination of parental rights is in the child’s best interests. *Id.* “Clear error exists when some evidence [may support] a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake.” *In re Dearmon*, 303 Mich App 684, 700; 847 NW2d 514 (2014). We give due regard to the trial court’s special opportunity to observe the witnesses. *Id.*

### B. STATUTORY GROUNDS

Respondent first argues that the trial court erred in finding that MCL 712A.19b(3)(c)(i), (g), and (j) were established by clear and convincing evidence. We disagree.

The trial court may only terminate parental rights after the establishment of at least one statutory ground by clear and convincing evidence. MCL 712A.19b(3). MCL 712A.19b provides, in pertinent part:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent presents the same argument in regards to both MCL 712A.19b(3)(c)(i) and (g), and therefore, we will also address them together. Specifically, respondent argues that these statutory grounds were not established because domestic violence no longer existed at the time of the termination, respondent had made improvements in regards to her substance-abuse issues, and respondent was working on finding housing. Further, respondent argues that there is "hope" that she may be able to rectify these issues in a reasonable time.

The conditions that led to the adjudication were domestic violence, substance abuse, and a neglectful and unfit home. While there had been no further allegations of domestic violence since March 2016, issues of substance abuse and lack of an appropriate home for the children continued. Respondent continued testing positive for illegal substances in the months leading up to the termination hearing. While under the supervision of the court, respondent was found in possession of a controlled substance, which resulted in her being held in contempt of court, as well as a felony conviction. The court recognized that respondent took positive steps, such as attending in-patient treatment and participating partially with her case-services plan; however, the court concluded that any benefit was clearly not sufficient to prompt respondent to stop using drugs. Moreover, while respondent no longer had a neglectful and dirty home, instead she did not have stable housing at all and was residing in a shelter. Respondent was unsure of how she would find permanent housing; she admitted that she was "having a hard time" finding housing. The evidence showed that respondent could not provide a fit home for the children.

Respondent argues that there is reason to hope that she could remedy these shortcomings. However, a court does not have to delay permanency for children based on an uncertain potential for a parent's success. *Trejo*, 462 Mich at 364. The court took into consideration the time that respondent had been under the court's supervision and the services offered, and found that considering the children's ages, respondent would not be able to remedy her failures within a reasonable amount of time. It was not clear error for the court to find that the conditions that led to the adjudication, including substance abuse and an inappropriate home, still existed at the time of termination, that because of those conditions respondent had failed to provide proper care or

custody for the children, and that there was no reasonable expectation that she would be able to remedy these problems within a reasonable amount of time. MCL 712A.19b(3)(c)(i), (g).

Because only one statutory ground is required for termination, we need not consider the trial court's findings under subsection (j). *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

### C. BEST INTERESTS

Respondent next argues that the trial court erred in finding that termination of her parental rights was in her children's best interests. Specifically, she argues that because the children were placed with a relative in a small community where respondent also lives, termination was not in their best interests. Again, we disagree.

MCL 712A.19b(5) states that "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." In order to terminate parental rights, a trial court must find by a preponderance of evidence that termination is in a child's best interests. *In re Moss*, 301 Mich App at 90. In making a determination, the court should consider a variety of factors, which may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanence, stability, and finality, and the advantage of a foster home over the parent's home." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (quotation marks and citations omitted). Other factors a court may consider are "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *Id.* at 714. Further, when children are in a relative placement at the time of the termination hearing, that is an "explicit factor" that the trial court must weigh in deciding whether termination is in the children's best interests. *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012).

The trial court clearly took into account that the children were placed with a relative, stating: "The Court knows from appellate court decisions that . . . the fact the children are in care of a relative would be one issue the Court needs to consider and address, and would mitigate against ordering termination of parental rights . . ." Although the court considered the children's placement with a relative when weighing whether termination of respondent's parental rights was in their best interests, it did not find that the relative placement outweighed other important factors. *Id.* The court noted that because of the children's ages, they needed permanency. The court acknowledged that there was a bond between the children and respondent, but indicated that the bond had lessened over the previous 13 months because of respondent's sporadic presence in their lives. In addition, the court was concerned with respondent's continued violations of court orders, noting that she had engaged in unauthorized parenting time, continued to use illegal substances, failed drug tests, and was convicted of a felony, all while under the court's supervision. The court did not believe that respondent was making any significant progress and believed that the children would be of adult age before respondent could work out her psychological, substance-abuse, and housing troubles. Ultimately, the court said that the children could not wait indefinitely while respondent struggled to become a fit parent. Because a court does not have to delay permanency for children in light

of a parent's uncertain potential for success, we conclude that the court did not clearly err in finding that termination was in the best interests of the children. *Trejo*, 462 Mich at 364.

Affirmed.

/s/ Patrick M. Meter  
/s/ Stephen L. Borrello  
/s/ Mark T. Boonstra